

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN M. SCHMIDT and U.S. POSTAL SERVICE,
AIRPARK STATION, Scottsdale, AZ

*Docket No. 03-201; Submitted on the Record;
Issued February 6, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established entitlement to a schedule award for permanent impairment of her right upper extremity.

On December 1, 1997 appellant, a 39-year-old window clerk, filed an occupational disease claim alleging that she sustained an employment-related injury to her right upper extremity. She identified November 11, 1997 as the date she first became aware of her condition. The Office of Workers' Compensation Programs accepted appellant's claim for right wrist strain, radiation of pain to right elbow and repetitive motion injury of right wrist. The Office later expanded the claim to include right lateral epicondylitis. Additionally, the Office authorized surgery for right bursa excision, which was performed on March 26, 1999. Appellant received appropriate wage-loss compensation following her surgery. She resumed part-time, light-duty work on June 1, 1999 and gradually increased her workday to eight hours by July 5, 1999. Appellant's treating physician, Dr. Francis K. Tindall, a Board-certified orthopedic surgeon, released her to resume her regular duties effective July 12, 1999 with a 10-pound lifting restriction.

On December 5, 2001 appellant filed a claim for a schedule award. She submitted an undated attending physician's report (Form CA-20) from Dr. Tindall, who noted a 10 percent permanent impairment of the elbow.

By letter dated December 13, 2001, the Office asked Dr. Tindall to provide an assessment of appellant's permanent impairment in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

Dr. Tindall responded by letter dated December 28, 2001 and advised the Office that he had last seen appellant on January 24, 2001, at which time she was noted to be doing very well. He also stated that he did not recall any restriction in appellant's range of motion, any decrease in strength, atrophy and no evidence of ankylosis or sensory change. Dr. Tindall stated that he

assumed appellant had recovered completely from her November 11, 1997 employment injury with no permanent impairment of function.

In a subsequent report dated July 19, 2002, Dr. Tindall stated that appellant presented with complaints of a flare up of her old tennis elbow problem in her right arm. Physical examination revealed slight tenderness in the vicinity of the elbow, a good strong grip and no evidence of any atrophy. Dr. Tindall also noted that appellant's surgical wound was well healed. Additionally, he explained that his earlier 10 percent impairment rating had gotten lost in the shuffle and he had forgotten about it when he commented in December 2001 that appellant had recovered completely from her November 11, 1997 employment injury.

The Office referred the case file to its medical adviser for a determination regarding the existence of any permanent impairment of appellant's right upper extremity. In a report dated September 22, 2002, the Office medical adviser found that appellant had a zero percent permanent impairment of her right upper extremity.

By decision dated October 3, 2002, the Office denied appellant's claim for a schedule award.

The Board finds that appellant failed to establish entitlement to a schedule award for permanent impairment of her right upper extremity.

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹ The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.²

Dr. Tindall's undated Form CA-20 noted that he discharged appellant from his care on January 24, 2001. In the remarks section of the report, Dr. Tindall noted the following: "Chronic pain, weakness and [history] of surgery on [right] elbow = 5 percent [permanent impairment of function] of [right] elbow [with] dominant [right] upper limb = 10 percent of elbow." Dr. Tindall, however, did not clearly delineate how he obtained his impairment rating under the fifth edition of the A.M.A., *Guides* (2001). As Dr. Tindall did not specifically correlate his findings with the fifth edition of the A.M.A., *Guides*, his undated impairment rating is insufficient to establish the extent of appellant's permanent impairment.³ His December 28, 2001 and July 19, 2002 reports similarly do not include a permanent impairment rating in accordance with the A.M.A., *Guides*.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Lela M. Shaw*, 51 ECAB 372 (2000).

The Office medical adviser reviewed Dr. Tindall's two most recent reports and concluded that the evidence failed to establish a permanent impairment of appellant's right upper extremity. Specifically, the Office medical adviser found no evidence of impairment due to loss of strength, loss of range of motion or any impairment due to sensory deficit or pain. This assessment is consistent with the findings on physical examination Dr. Tindall reported in his most recent opinion dated July 19, 2002. As previously indicated, other than noting slight tenderness at the vicinity of the right elbow, Dr. Tindall reported essentially normal physical findings. Accordingly, the probative medical evidence of record fails to demonstrate that appellant has a permanent impairment of her right upper extremity causally related to her November 11, 1997 employment injury.

The October 3, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 6, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member